

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

CRIMINAL ACTION NO. 3:97-CR-00006-NBB

MAURICE CLIFTON

DEFENDANT

ORDER

This matter comes before the court, *sua sponte*, for consideration of the transfer of this cause. Defendant, Maurice Clifton, has filed a pleading titled “Motion to Reopen Case,” in which he claims that his indictment, conviction, sentence and current imprisonment violates the United States Constitution. Clifton further argues that he is entitled to “summary acquittal and dismissal.”

Clifton’s petition is effectively a motion to vacate judgment and sentence. Although it is not labeled as such, “the name makes no difference. It is the substance that controls.” *United States v. Lloyd*, 398 F.3d 978, 980 (7th Cir. 2005). Thus, Clifton’s petition falls under 28 U.S.C. § 2255. Clifton has already filed more than one unsuccessful § 2255 motion. *See* Doc. # 71 (order denying motion to vacate sentence under § 2255); Doc. # 77 (notice of the Fifth Circuit denying Clifton’s request to file a successive § 2255 motion).

The Antiterrorism and Effective Death Penalty Act requires that an applicant seeking to file a second or successive motion first be certified by a panel of the appropriate court of appeals. *See* 28 U.S.C. § 2255(h); *see also* 28 U.S.C. § 2244(b)(3)(A). Clifton has not obtained such authorization. Rather than dismissing Clifton’s petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(C). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997).

Therefore, in the interest of justice and judicial economy, it is hereby **ORDERED**:

- 1) That this petition shall be transferred to the Fifth Circuit Court of Appeals for Clifton to seek permission to file this successive §2255 petition;
- 2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(C), and *In re Epps*, 127 F.3d at 365; and
- 3) That this petition and all other pending motions in the instant case shall be held in suspension until such time as the Fifth Circuit Court of Appeals has ruled upon Clifton's request.

This, the 30th day of August, 2018.

/s/ Neal Biggers

NEAL B. BIGGERS, JR.

UNITED STATES DISTRICT JUDGE